

Supreme Court, U.S.

FILED

OCT 8 1988

ARTHUR F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
 October Term, 1988

UNITED GAS PIPE LINE COMPANY,

Petitioner,
v.

LOUISIANA POWER & LIGHT COMPANY,

Respondent.

**On Petition For Writ of Certiorari To The
 Louisiana Court of Appeal, Fourth Circuit**

**OPPOSITION TO MOTION FOR LEAVE
 TO FILE BRIEF AMICUS CURIAE**

CONSTANCE CHARLES WILLEMS
 (Counsel of Record)
 WINNIE M. D'ANGELO
 McGLINCHY, STAFFORD,
 MINTZ, CELLINI & LANG
 643 Magazine Street
 New Orleans, LA 70130
 Telephone: (504) 586-1200

*Attorneys for Respondent,
 The City of New Orleans*

ROBERT L. RIEGER, JR.
 LOUISIANA PUBLIC SERVICE
 COMMISSION
 One American Place
 Suite 1630
 Baton Rouge, LA 70825
 Telephone: (504) 342-4429

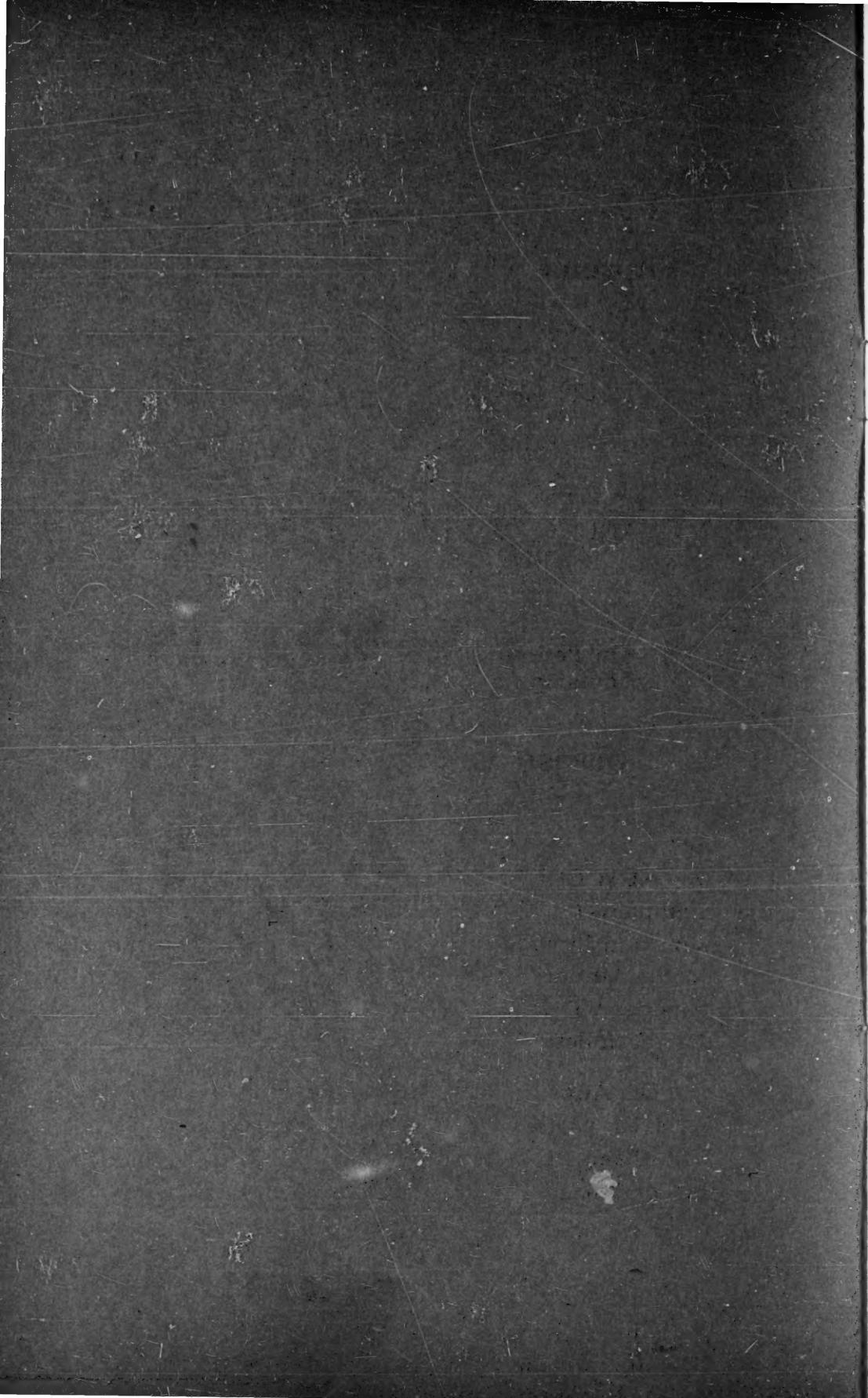
*Attorneys for Respondent,
 Louisiana Public Service Commission*

October 7, 1988

MONROE & LEMANN
 EUGENE G. TAGGART
 (Counsel of Record)
 TERRENCE G. O'BRIEN
 KATHRYN J. LICHTENBERG
 201 St. Charles Avenue
 New Orleans, LA 70170-3300
 Telephone: (504) 586-1900

*Attorneys for Respondent,
 Louisiana Power & Light Company*

STONE, PIGMAN, WALther,
 WITTMANN & HUTCHINSON
 MICHAEL R. FONTHAM
 (Counsel of Record)
 WAYNE J. LEE
 PAUL L. ZIMMERING
 546 Carondelet Street
 New Orleans, LA 70130
 Telephone: (504) 581-3200



In The

Supreme Court of the United States

October Term, 1988

UNITED GAS PIPE LINE COMPANY,

Petitioner,

v.

LOUISIANA POWER & LIGHT COMPANY,

Respondent.

**On Petition For Writ of Certiorari To The
Louisiana Court of Appeal, Fourth Circuit**

**OPPOSITION TO MOTION FOR LEAVE
TO FILE BRIEF AMICUS CURIAE**

NOW COME Respondents, Louisiana Power & Light Company ("LP&L"), Louisiana Public Service Commission, and City of New Orleans, and state their Opposition to the Motion of Interstate Natural Gas Association of America ("INGAA") for leave to file Brief Amicus Curiae, for the following reasons:

On August 2, 1988, counsel for Respondent LP&L received a letter, dated July 28, 1988, from Mr. John H. Cheatham, III, an attorney for INGAA, who stated that his organization desired to file a brief in support of

petitioner, United Gas Pipe Line Company. United is a member of INGAA, as is MidCon Corp., one of the wholly-owned subsidiaries of Occidental Petroleum Corporation that will actually pay any judgment in this case. (Petition at ii.)

Counsel for LP&L stated its opposition to this request, as did counsel for other Respondents. (A copy of LP&L's letter to INGAA stating this opposition is attached.)

Despite this Court's rule that an amicus brief in such circumstances is not favored (Rule 36.1), INGAA nevertheless filed a motion for leave with attached amicus brief on September 27, 1988, contemporaneously with the filing of Respondents' Briefs in Opposition to the Petition. By filing on the same date that Respondents filed their briefs with the Court, INGAA has deliberately deprived Respondents of an opportunity to respond to INGAA's erroneous arguments. Although INGAA's filing on the Respondents' date may be within the letter of Rule 36.1 as presently written, the Court's prior rule required such a Brief to be filed at "a reasonable time" prior to the consideration of the petition by the Court. Respondents understand this still to be the intent of the rule. See, Stern & Gressman, *Supreme Court Practice*, 6th Ed., p. 395. INGAA's time of filing is not reasonable and was chosen by INGAA to prejudice Respondents. This Court should not countenance such sharp practice.

INGAA was not a party to any of the United litigation, state or federal, and specifically cannot claim to be familiar with the extensive record of United's fault which the Petition seeks to bring to this Court. The policy

arguments of INGAA, however, were made to the Federal Energy Regulatory Commission, and rejected by it in Opinion No. 248, *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. (CCH) ¶ 61,043 (1986) and in Opinion No. 248-A, *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. (CCH) ¶ 61,340 (1986). INGAA's same arguments made on appeal in that case were also rejected by the United States Court of Appeals for the D.C. Circuit. *Transcontinental Gas Pipe Line Corp. v. FERC*, No. 86-1358 (D.C. Cir. order entered Feb. 16, 1988, order on rehearing entered April 22, 1988) (Resp.App. B at 3a). Those decisions are final, and INGAA should not be allowed to seek their review in the guise of amicus here.

Respectfully submitted,

CONSTANCE CHARLES WILLEMS
(Counsel of Record)
WINNIE M. D'ANGELO
McGLINCHY, STAFFORD,
MINTZ, CELLINI & LANG
643 Magazine Street
New Orleans, LA 70130
Telephone: (504) 586-1200

*Attorneys for Respondent,
The City of New Orleans*

ROBERT L. RIEGER, JR.
LOUISIANA PUBLIC SERVICE
COMMISSION
One American Place
Suite 1630
Baton Rouge, LA 70825
Telephone: (504) 342-4429

MONROE & LEMANN
EUGENE G. TAGGART
(Counsel of Record)
TERRENCE G. O'BRIEN
KATHRYN J. LICHTENBERG
201 St. Charles Avenue
New Orleans, LA 70170-3300
Telephone: (504) 586-1900

*Attorneys for Respondent,
Louisiana Power & Light
Company*

STONE, PIGMAN, WALther,
WITTMANN & HUTCHINSON
MICHAEL R. FONTHAM
(Counsel of Record)
WAYNE J. LEE
PAUL L. ZIMMERING
546 Carondelet Street
New Orleans, LA 70130
Telephone: (504) 581-3200

*Attorneys for Respondent,
Louisiana Public Service Commission*

October 7, 1988

App. 1

APPENDIX

MONROE & LEMANN
ATTORNEYS AND COUNSELLORS AT LAW
(A PROFESSIONAL CORPORATION)
201 ST. CHARLES AVENUE
NEW ORLEANS 70170-3300

TELEPHONE 586-1900

AREA CODE 504

CABLE ADDRESS

"RONCAL"

TWX 810-951-5106

TELEX 584112

NIGHT TELECOPIER

504-581-7312

August 2, 1988

#7126-1132-H-3

Mr. John H. Cheatham, III
Senior Vice President and General Counsel
Interstate Natural Gas Association of America
1660 L Street, N.W.
Washington, D.C. 20036

Re: United Gas Pipe Line Company v.
Louisiana Power & Light Company

Dear Mr. Cheatham:

We are in receipt of your letter dated July 28, 1988, requesting LP&L's consent to allow INGAA to participate as *amicus curiae* in the proceedings in the United States Supreme Court provoked by a Petition for Certiorari filed in the name of "United Gas Pipe Line Company."

As we discussed on the telephone, LP&L is unable to grant such consent and we are returning, as you requested, your letter unsigned.

Permit me to again state our disappointment that the Interstate Natural Gas Association of America chooses to interject itself in this matter. United's judgment liability

App. 2

has been assumed by others, and, in any event, the poor performance of United in the 1960's and 1970's which led to its liability is common knowledge in the industry. It is unfortunate that your association has decided to waste its resources defending the indefensible.

Yours truly,
/s/ Terrence G. O'Brien
Terrence G. O'Brien

App. 3

INGAA

(logo)

JERALD V. HALVORSEN

President

1660 L Street, N.W.

Washington, D.C. 20036

JERRY T. VERKLER

Senior Vice President

1660 L Street, N.W.

Washington, D.C. 20036

JOHN H. CHEATHAM, III

Senior Vice President,

General Counsel and Secretary

1660 L Street, N.W.

Washington, D.C. 20036

J. B. HIPPLE

Treasurer

P.O. Box 2521

Houston, Texas 77252

EXECUTIVE COMMITTEE

VERNON T. JONES

Chairman of the Board

P.O. Box 2400

Tulsa, Oklahoma 74102

KENNETH L. LAY

Vice Chairman

P.O. Box 1188

Houston, Texas 77251-1188

RICHARD S. MORRIS

P.O. Box 1492

El Paso, Texas 79978

DERRILL CODY

P.O. Box 2521

Houston, Texas 77252

ROBERT W. BEST

3800 Frederica Street

Owensboro, Kentucky 42301

July 28, 1988

Terrence G. O'Brien
Monroe and Lemann
201 St. Charles Avenue
33rd Floor
Place St. Charles
New Orleans, Louisiana 70170-3300

RE: *United Gas Pipeline Company v. Louisiana Power & Light Company*, S.Ct. No. ___, October Term, 1988, Petition for Certiorari.

Dear Mr. O'Brien:

The Interstate Natural Gas Association of America ("INGAA"), is a national trade association representing virtually all interstate natural gas transmission companies doing business in the United States. Pursuant to Rule 36 of the Rules of United States Supreme Court, 28 U.S.C., I am requesting you consent to allow INGAA to participate, *amicus curiae* in the referenced case. Please indicate your consent by signing the signature block below, and return this letter to me in the enclosed stamped self-addressed envelope. In the event that you do not consent to our participation, please return the letter to me unsigned.

Sincerely,
/s/John H. Cheatham, III
John H. Cheatham, III
Senior Vice President
and General Counsel

App. 5

On behalf of Louisiana Power & Light Company, I hereby consent to the full participation of the Interstate Natural Gas Association of America in the referenced case.

(handwritten) Consent Refused
/s/ Terrence O'Brien

INTERSTATE NATURAL GAS ASSOCIATION
OF AMERICA

1660 L STREET, NORTHWEST, WASHINGTON, D.C. 20036-3611,
TELEPHONE 202/293-5770
